

Water Resources Development Act of 1988

[P.L. 100–676; Enacted November 17, 1988]

[As Amended Through P.L. 117–263, Enacted December 23, 2022]

【Currency: This publication is a compilation of the text of Public Law 100–676. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Resources Development Act of 1988”.

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SEC. 3. PROJECT AUTHORIZATIONS.

(a) **AUTHORIZATION OF CONSTRUCTION.**—Except as otherwise provided in this subsection, the following projects for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection:

(1) **LOWER MISSION CREEK, SANTA BARBARA, CALIFORNIA.**—The project for flood control, Lower Mission Creek, Santa Barbara, California: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$10,420,000, with an estimated first Federal cost of \$5,909,000, and an estimated first non-Federal cost of \$4,511,000.

(2) **FT. PIERCE HARBOR, FLORIDA.**—The project for navigation, Ft. Pierce Harbor, Florida: Report of the Chief of Engineers, dated December 14, 1987, at a total cost of \$6,742,000, with an estimated first Federal cost of \$4,319,000, and an estimated first non-Federal cost of \$2,423,000.

(3) **NASSAU COUNTY, FLORIDA.**—The project for beach erosion control, Nassau County (Amelia Island), Florida: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of \$5,753,000, with an estimated first Federal cost of \$4,619,000, and an estimated first non-Federal cost of \$1,134,000.

(4) **PORT SUTTON CHANNEL, FLORIDA.**—The project for navigation, Port Sutton Channel, Florida: Report of the Chief of Engineers, dated March 28, 1988, at a total cost of \$2,670,000, with an estimated first Federal cost of \$1,155,000, and an estimated first non-Federal cost of \$1,515,000; except that con-

struction of such project may not be initiated until the Secretary determines that such project serves more than one beneficiary.

(5) CHICAGOLAND UNDERFLOW PLAN, ILLINOIS.—The project for flood control, Chicagoland Underflow Plan, Illinois: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$419,000,000, with an estimated first Federal cost of \$314,250,000, and an estimated first non-Federal cost of \$104,750,000.

(6) LOWER OHIO RIVER, ILLINOIS AND KENTUCKY.—The project for navigation, Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky: Report of the Chief of Engineers, dated August 20, 1986, at a total cost of \$2,918,000,000, with a first Federal cost of \$2,918,000,000, and with the costs of construction of the project to be paid one-half from amounts appropriated from the general fund of the Treasury and one-half from amounts appropriated from the Inland Waterways Trust Fund.

(7) HAZARD, KENTUCKY.—The project for flood control, Hazard, Kentucky: Report of the Chief of Engineers, dated October 30, 1986, at a total cost of \$7,450,000, with an estimated first Federal cost of \$5,590,000 and an estimated first non-Federal cost of \$1,860,000.

(8) MISSISSIPPI AND LOUISIANA ESTUARINE AREAS, MISSISSIPPI AND LOUISIANA.—The project for environmental enhancement, Mississippi and Louisiana Estuarine Areas, Mississippi and Louisiana: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of \$59,300,000.

(9) WOLF AND JORDAN RIVERS, MISSISSIPPI.—The project for navigation, Wolf and Jordan Rivers and Bayou Portage, Mississippi: Report of the Chief of Engineers, dated June 10, 1987, at a total cost of \$2,290,000, with an estimated first Federal cost of \$1,620,000 and an estimated first non-Federal cost of \$670,000.

(10) TRUCKEE MEADOWS, NEVADA.—The project for flood control, Truckee Meadows, Nevada: Report of the Chief of Engineers, dated July 25, 1986, at a total cost of \$78,400,000, with an estimated first Federal cost of \$39,200,000 and an estimated first non-Federal cost of \$39,200,000; except that the Secretary is authorized to carry out fish and wildlife enhancement as a purpose of such project, including fish and wildlife enhancement measures described in the District Engineer's Report, dated July 1985, at an additional total cost of \$4,140,000.

(11) WEST COLUMBUS, OHIO.—The project for flood control, Scioto River, West Columbus, Ohio: Report of the Chief of Engineers, dated February 9, 1988, at a total cost of \$31,562,000, with an estimated first Federal cost of \$23,671,000, and an estimated first non-Federal cost of \$7,891,000.

(12) DELAWARE RIVER, PENNSYLVANIA AND DELAWARE.—The project for navigation, Delaware River, Philadelphia to Wilmington, Pennsylvania and Delaware: Report of the Chief of Engineers, dated June 15, 1986, at a total cost of \$17,200,000, with an estimated first Federal cost of \$9,100,000 and an estimated first non-Federal cost of \$8,100,000.

(13) CYPRESS CREEK, TEXAS.—The project for flood control, Cypress Creek, Texas: Report of the Chief of Engineers, dated October 12, 1987, at a total project cost of \$114,200,000, with an estimated first Federal cost of \$84,900,000 and an estimated first non-Federal cost of \$29,300,000.

(14) FALFURRIAS, TEXAS.—The project for flood control, Falfurrias, Texas: Report of the Chief of Engineers, dated March 15, 1988, at a total cost of \$31,800,000, with an estimated first Federal cost of \$15,900,000, and an estimated first non-Federal cost of \$15,900,000.

(15) GUADALUPE RIVER, TEXAS.—The project for navigation, Guadalupe River to Victoria, Texas: Report of the Chief of Engineers, dated September 1, 1987, at a total cost of \$23,900,000, with an estimated first Federal cost of \$15,100,000, and an estimated first non-Federal cost of \$8,800,000.

(16) MCGRATH CREEK, WICHITA FALLS, TEXAS.—The project for flood control, McGrath Creek, Wichita Falls, Texas: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$9,100,000, with an estimated first Federal cost of \$6,800,000 and an estimated first non-Federal cost of \$2,300,000.

(b) MAXIMUM COST OF PROJECTS.—Section 902 of the Water Resources Development Act of 1986 (100 Stat. 4183) is amended—

(1) by striking out “in this Act, or an amendment made by this Act, for a project” and inserting in lieu thereof “with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project”;

(2) in paragraph (1) by inserting “, in any later law,” after “in this Act” and by inserting “or any later law” after “by this Act”;

(3) in paragraph (2)(A) by inserting “or any later law” after “of this Act”; and

(4) in paragraph (2)(B) by inserting “or any later law” after “by this Act”.

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SEC. 7. RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary is authorized to carry out basic, applied, and advanced research activities as required to aid in the planning, design, construction, operation, and maintenance of water resources development projects and to support the missions and authorities of the Corps of Engineers.

(b) TESTING AND APPLICATION.—In carrying out subsection (a), the Secretary is authorized to test and apply technology, tools, techniques, and materials developed pursuant to such subsection, including the testing and application of such technology, tools, techniques, and materials at authorized water resources development projects, in consultation with the non-Federal interests for such projects.

(c) OTHER TRANSACTIONAL AUTHORITY FOR PROTOTYPE PROJECTS.—

(1) IN GENERAL.—In carrying out subsection (b), the Secretary is authorized to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out prototype projects to support basic, applied, and advanced research activities that are directly relevant to the civil works missions and authorities of the Corps of Engineers.

(2) FOLLOW-ON PRODUCTION TRANSACTIONS.—A transaction entered into under paragraph (1) for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction in accordance with the requirements of section 4022 of title 10, United States Code.

(3) GUIDANCE.—Prior to entering into the first transaction under this subsection, the Secretary shall issue guidance for entering into transactions under this subsection (including guidance for follow-on production contracts or transactions under paragraph (2)).

(4) CONDITIONS.—In carrying out this subsection, the Secretary shall ensure that—

(A) competitive procedures are used to the maximum extent practicable to award each transaction; and

(B) at least one of the following conditions is met with respect to each transaction:

(i) The prototype project includes significant participation by at least one nonprofit research institution or nontraditional defense contractor, as that term is defined in section 3014 of title 10, United States Code.

(ii) All significant participants in the transaction other than the Federal Government are small business concerns, as that term is used in section 3 of the Small Business Act (15 U.S.C. 632) (including such concerns participating in a program described in section 9 of such Act (15 U.S.C. 638)).

(iii) At least one-third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(iv) The Head of the Contracting Activity for the Corps of Engineers submits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, cooperative agreement, or grant.

(5) NOTIFICATION.—Not later than 30 days before the Secretary enters into a transaction under paragraph (1), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of—

(A) the dollar amount of the transaction;

(B) the entity carrying out the prototype project that is the subject of the transaction;

(C) the justification for the transaction; and

(D) as applicable, the water resources development project where the prototype project will be carried out.

(6) REPORT.—Not later than 4 years after the date of enactment of the Water Resources Development Act of 2022, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the use of the authority under this subsection.

(7) COMPTROLLER GENERAL ACCESS TO INFORMATION.—

(A) EXAMINATION OF RECORDS.—Each transaction entered into under this subsection shall provide for mandatory examination by the Comptroller General of the United States of the records of any party to the transaction or any entity that participates in the performance of the transaction.

(B) LIMITATIONS.—

(i) PARTIES AND ENTITIES.—Examination of records by the Comptroller General pursuant to subparagraph (A) shall be limited as provided under clause (ii) in the case of a party to the transaction, an entity that participates in the performance of the transaction, or a subordinate element of that party or entity if the only transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that transaction were entered into under paragraph (1) or under section 4021 or 4022 of title 10, United States Code.

(ii) RECORDS.—The only records of a party, other entity, or subordinate element referred to in clause (i) that the Comptroller General may examine pursuant to subparagraph (A) are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous transactions referred to in such clause that were entered into by that particular party, entity, or subordinate element.

(C) WAIVER.—The Head of the Contracting Activity for the Corps of Engineers may waive the applicability of subparagraph (A) to a transaction if the Head of the Contracting Activity for the Corps of Engineers—

(i) determines that it would not be in the public interest to apply the requirement to the transaction; and

(ii) transmits to the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Comptroller General, before the transaction is entered into, a notification of the waiver, including the rationale for the determination under clause (i).

(D) TIMING.—The Comptroller General may not examine records pursuant to subparagraph (A) more than 3 years after the final payment is made by the United States under the transaction.

(E) REPORT.—Not later than 1 year after the date of enactment of the Water Resources Development Act of 2022, and annually thereafter, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the use of the authority under this paragraph.

(8) TERMINATION OF AUTHORITY.—The authority to enter into a transaction under this subsection shall terminate on December 31, 2028.

(d) COORDINATION AND CONSULTATION.—In carrying out this section, the Secretary may coordinate and consult with Federal agencies, State and local agencies, Indian Tribes, universities, consortiums, councils, and other relevant entities that will aid in the planning, design, construction, operation, and maintenance of water resources development projects.

(e) ANNUAL REPORT.—

(1) IN GENERAL.—For fiscal year 2025, and annually thereafter, in conjunction with the annual budget submission of the President to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on basic, applied, and advanced research activities and prototype projects carried out under this section.

(2) CONTENTS.—Each report under paragraph (1) shall include—

(A) a description of each ongoing and new activity or project, including—

(i) the estimated total cost of the activity or project;

(ii) the amount of Federal expenditures for the activity or project;

(iii) the amounts provided by a non-Federal party to a transaction described in subsection (c), if applicable;

(iv) the estimated timeline for completion of the activity or project;

(v) the requesting district of the Corps of Engineers, if applicable; and

(vi) how the activity or project is consistent with subsection (a); and

(B) any additional information that the Secretary determines to be appropriate.

(f) SAVINGS CLAUSE.—Nothing in this section affects the authority of the Secretary to carry out, through the Engineer Research and Development Center, any activity requested by a district of the Corps of Engineers in support of a water resources development project or feasibility study (as defined in section 105(d))

of the Water Resources Development Act of 1986 (33 U.S.C. 2215(d))).

(g) ESTABLISHMENT OF ACCOUNT.—The Secretary, in consultation with the Director of the Office of Management and Budget, shall establish a separate appropriations account for administering funds made available to carry out this section.

[33 U.S.C. 2313]

SEC. 8. INNOVATIVE TECHNOLOGY.

(a) USE.—The Secretary shall, whenever feasible, seek to promote long- and short-term cost savings, increased efficiency, reliability, and safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under the Secretary's jurisdiction. To further this goal, Congress encourages the Secretary to—

(1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair, and operation and maintenance technologies;

(2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;

(3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;

(4) foster design competition; and

(5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

(b) ACCELERATED ADOPTION OF INNOVATIVE TECHNOLOGIES FOR MANAGEMENT OF CONTAMINATED SEDIMENTS.—

(1) TEST PROJECTS.—The Secretary shall approve an appropriate number of projects to test, under actual field conditions, innovative technologies for environmentally sound management of contaminated sediments.

(2) DEMONSTRATION PROJECTS.—The Secretary may approve an appropriate number of projects to demonstrate innovative technologies that have been pilot tested under paragraph (1).

(3) CONDUCT OF PROJECTS.—Each pilot project under paragraph (1) and demonstration project under paragraph (2) shall be conducted by a university with proven expertise in the research and development of contaminated sediment treatment technologies and innovative applications using waste materials.

(4) LOCATION.—At least 1 of the projects under this subsection shall be conducted in New England by the University of New Hampshire.

(c) REPORTS.—Within 2 years after the date of the enactment of this Act, and thereafter at the Secretary's discretion, the Secretary shall provide Congress with a report on the results of, and recommendations to increase, the development and use of innovative technology in water resources development projects under the Secretary's jurisdiction. Such report shall also contain information regarding innovative technologies which the Secretary has considered and rejected for use in water resources development projects under the Secretary's jurisdiction.

(d) INNOVATIVE TECHNOLOGY DEFINED.—For the purpose of this section, the term “innovative technology” means designs, methods, or materials, including roller compacted concrete, geosynthetic materials, and advanced composites, that the Secretary determines are appropriate to carry out this section.

[33 U.S.C. 2314]

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SEC. 12. SECTION 215 REIMBURSEMENT LIMITATION PER PROJECT.

Section 215(a) of the Flood Control Act of 1968 (42 U.S.C. 1962d–5a(a)) is amended by inserting after “\$3,000,000” the following: “or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$5,000,000 in any fiscal year.”.

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SEC. 38. DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF THE DELAWARE RIVER.

(a) AREA TO BE DECLARED NON-NAVIGABLE; PUBLIC INTEREST.—Unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed projects in Philadelphia, Pennsylvania, to be undertaken within the boundaries described below, are not in the public interest then, subject to subsections (b) and (c) of this section, those portions of the Delaware River, bounded and described as follows, are declared to be non-navigable waters of the United States:

- (1) LIBERTY LANDING.—[Omitted]
- (2) MARINA TOWERS AND WORLD TRADE CENTER-PIER 25 NORTH.—[Omitted]
- (3) MARINE TRADE CENTER-PIER 24 NORTH.—[Omitted]
- (4) NATIONAL SUGAR COMPANY “SUGAR HOUSE”.—[Omitted]
- (5) RIVERCENTER.—[Omitted]

(b) LIMITS ON APPLICABILITY; REGULATORY REQUIREMENT.—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations, including, but not necessarily limited to, sections 9 and 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401 and 403), commonly known as the River and Harbors Appropriation Act of 1899, section 404 of the Federal Water Pollution Control Act, and the National Environmental Policy Act of 1969.

(c) EXPIRATION DATE.—If, 20 years from the date of the enactment of this Act, any area or part thereof described in subsection (a) is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set out in subsection (b) of this section, or if work in connection with any activity permitted in subsection (b) is not commenced within 5 years after issuance of such permits, then the declaration of non-navigability for such area or part thereof shall ex-

pire. Notwithstanding the preceding sentence, the declaration of nonnavigability for the area described in subsection (a)(5), or any part thereof, shall not expire.

【33 U.S.C. 59j-1】

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SEC. 52. PROJECT DEAUTHORIZATIONS.

(a) EXTENSION OF LIMITATION ON PERIOD OF AUTHORIZATION.—

(1) PROJECTS IN THIS ACT.—The provisions of section 1001(a) and section 1001(c) of the Water Resources Development Act of 1986 shall apply to the projects authorized for construction by this Act, except that the 5-year period during which funds must be obligated to prevent deauthorization shall begin on the date of the enactment of this Act.

(2) PROJECTS THEREAFTER.—The provisions of section 1001(a) and section 1001(c) of the Water Resources Development Act of 1986 shall also apply to projects authorized for construction subsequent to this Act, except that the 5-year period during which funds must be obligated to prevent deauthorization shall begin on the date of the authorization of such projects.

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(e) NOTICE.—The Secretary shall publish in the Federal Register notice as to any project which would no longer have been authorized pursuant to the provisions of section 1001 of the Water Resources Development Act of 1986 or subsection (a) of this section but remains authorized due to enactment of law by Congress.

【33 U.S.C. 579a note】

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